

SPEECH

OF

HON. JOHN S. CARLILE, OF VIRGINIA,

ON THE

**BILL TO CONFISCATE THE PROPERTY AND FREE
THE SLAVES OF REBELS;**

DELIVERED

IN THE SENATE OF THE UNITED STATES, MARCH 11, 1862.

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SPEECH.

The Senate having under consideration the bill to confiscate the property and free the slaves of rebels—

Mr. CARLILE said: I do not propose, Mr. President, to follow the example set us by my friend, the honorable Senator from Illinois, [Mr. BROWNING,] who addressed the Senate yesterday, by saying what I may do in the future upon the happening of a contingency which, in my judgment, never can arise. I am content to deal with the present. If I can meet wisely the questions of the hour, I shall be satisfied; and in my opinion it would be well if we would, in this the day of our trial, act upon the maxim, "Sufficient unto the day is the evil thereof." The bill under consideration is entitled "A bill to confiscate the property and free the slaves of rebels." The objects of the bill, as stated in the title, are, in my opinion, beyond the power of accomplishment, if we regard our constitutional obligations. The Supreme Court would have to pronounce such a law unconstitutional in any case arising under it, if it could be brought before that tribunal for its decision. The founders of the Government intended to secure to every citizen, and have so provided in the Constitution; the right to test the constitutionality of any congressional enactment before the Supreme Court; but here is a bill taking from more than one fourth of the entire population of this whole country all their property of every kind and description, reducing them to beggary and want, without judicial trial or legal investigation. The bill denies to the citizen the constitutional right of testing the constitutionality of the act before the tribunal created by the Constitution. It would seem as if the authors of the bill, conscious of the unconstitutionality of the proposed measure, purposely framed it so that its constitutionality could not be pronounced upon by the Supreme Court.

The bill proposes to confiscate to the use of the Government all the property, real and personal, belonging to the citizens of the seceded States who are or may be in the service of the so-called confederate States; or who in any way give aid and comfort to the rebellion. When it is remembered that the authors of the rebellion were in possession of the various State governments, and

used the power and machinery of their respective State governments to compel the people to acquiesce in their unconstitutional acts, and to recognize their usurped authority, it will be seen that all the property of each and every citizen in the seceded States would be forfeited under this bill. Such a sweeping proposition, so unjust and cruel a measure, one better calculated to continue the war forever and exhaust the whole country, never has been in the history of the world, and I predict never will be again, proposed to any legislative assembly representing a civilized community.

By the bill all the property, except slaves, is to be sold, and the proceeds put into the public Treasury. The slaves are to be emancipated in violation of the Constitution and in disregard of the acknowledged constitutional rights of their owners and of the States wherein they reside. The want of power in Congress to interfere with slavery in the States where it exists has always heretofore been admitted; the most ultra abolitionists admit that Congress cannot interfere with slavery in the States, and because this is so they denounce the Constitution as a covenant with death and a league with hell. The ablest speech made this session in Congress in favor of converting the struggle in which we are engaged into an anti-slavery war, was made by the Representative in the House from Kansas, [Mr. CONWAY.] It is a speech that must challenge the admiration of those who differ with its author, for its boldness, frankness, and candor. The member from Kansas with directness meets the questions he discusses; there is no mistaking his position. Not a dollar or a man will he vote for the restoration of the Union. Millions for an anti-slavery war, not one cent to suppress insurrection and to restore the supremacy of the Constitution and the laws. Do I misrepresent him? Let him speak for himself:

"For one, I shall not vote another dollar or man for the war until it assumes a different standing, and tends directly to an anti-slavery result. Millions for freedom, but not one cent for slavery!"

To accomplish his purpose—the abolition of slavery—he would recognize the so-called confederate States as an independent Power, and he

would conquer the seceded States and hold them as subject provinces. Hear him again:

"To recognize the confederate States for their benefit is no part of our duty; but to shape our policy to accord with events, and enable us to fulfill a high purpose, is what we are imperatively called upon to do. The fiction upon which we are now proceeding binds us to slavery; and hence the national arms, instead of being directed against it, are held where they may at any moment be required to be turned to its defense.

"The wish of the masses of our people is to conquer the seceded States to the authority of the Union, and hold them as subject provinces."

The member from Kansas admits that his purposes cannot be accomplished constitutionally, and expressly refers to the bill now before the Senate, and shows it to be unconstitutional. Hear him again:

"Slavery cannot be abolished in a State by act of Congress. The thing is impossible. Congress is the legislative branch of the Government, performing its duties under certain constitutional limitations. Slavery in the States is outside of those limitations. It can be abolished only by the States themselves, or by the Executive in time of war, on principles of public law, as ably expounded many years ago by John Quincy Adams. In the suppression of insurrection, however, the Executive has not this power, unless the insurgents have ceased to be parties to our constitutional Union; in which case they have, in fact, ceased to be insurgents, and become belligerents.

"The overthrow of slavery by confiscating the property of rebel slaveholders seems to me to be utterly impracticable, consistently with the plain requirements of the Constitution." A bill has recently been introduced into the Senate to declare the property of all persons engaged in the rebellion forfeit, and directing the President to execute its provisions summarily without the interposition of civil process for trial or judgment. This bill is unconstitutional. The fifth amendment to the Constitution provides that, 'No person shall be deprived of life, liberty, or property without due process of law.' And the sixth amendment is as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State or district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

"A bill has also been introduced into this body of similar import, and obnoxious to the same objection, and likewise to a still stronger one. This latter bill proposes to abolish a State, and degrade it to the position of a Territory. Such an act as this is utterly at war with the theory of our Federal system. It could not be carried into effect without destroying the nation, as it has heretofore existed. Its success would establish a precedent which would make the Federal Government the source of all power, and convert the States into mere corporations."

To accomplish his purposes, he would recognize the so-called confederate States as a separate nation, and wage war upon them because he believes that the laws regulating public war would enable him to deprive the citizens of those States of \$2,000,000,000 worth of slave property. He says:

"The conflict has now been progressing nine months, and has changed its character from an attempt to destroy an insurrection into a deliberate and settled war."

I have read from the speech of the member from Kansas, because, in my opinion, it is a representative speech, and because he has had the boldness to avow what I believe are the real views of his party, but what his party associates, less bold than himself, for prudential reasons do not avow. If a member from a slave State had uttered such

sentiments as those I have read from the speech of the member from Kansas, the whole air would have been filled with the cry of disloyalty and his expulsion demanded. The press that clamored so loudly for the expulsion of the late Senator from Indiana and the rejection of the Senator from Oregon, is engaged in applauding the sentiments of the member from Kansas. Those sentiments are, as I have shown you, that unless the confederate States are recognized as an independent Power and war is waged upon them for the abolition of slavery, not another man or dollar of money will the member from Kansas vote. Let a member from a slave State of either House declare that he would—unless the so-called confederate States are recognized and war allowed, not to conquer the northern States and hold them as subject provinces, but only to secure constitutional guarantees for slavery in the Union—not vote another man or another dollar; how long, think you, would he or ought he to retain his seat in Congress? And yet what would be the difference? Whose utterances would be most disloyal, or, if you please, most treasonable?

For more than twenty-five years, Mr. President, the representatives of the abolitionists and of the secessionists have pulled the same string at different ends, heretofore sitting together in the same Congress and acknowledging the same country. They are still pulling the same string at different ends of the string and each in his own end of the country. Both want the so-called confederate government recognized; both want the rebellion dignified by the name of war; both want their rights. The one wants you to acknowledge his right to take his slave into the Territories, not that he will ever take him there; the other wants you to acknowledge his right to liberate the slave in the slave States, not that he would do it, for he will not let the free negroes live in his State, and he knows that they will not be permitted to live in the slave States. The secessionist is fighting for his rights; the abolitionist would have you fight for his. Both contend that the Union is dissolved. *Par nobile fratrum*. People of America look at them! Behold a pair of noble brothers—abolition and secession; twins they are; spawned at the same time in the same muddy stream.

The third section of this bill makes it the duty of the President to colonize the negroes at the cost of the Government, of course the Government to get the money by taxing the people. It is not enough to tax them for war purposes, but they must be taxed to pay overseers on Georgia and South Carolina plantations; taxed to the tune of ten dollars an acre, to buy implements of husbandry for all the land tilled by these overseers in Georgia and South Carolina; taxed to buy land in tropical climates; taxed to send negroes to tropical climates; in short, the people are to be taxed upon lying down and getting up, standing or walking, asleep or awake, all for the glorious privilege of evincing to the world the enlarged philanthropy that can view with complacency the sufferings and the groans of the white race, but is horrified at the sight of four millions of negroes comfortable, contented, and happy, unconscious of suffering until informed by some philanthropic Greeley; who was

willing to permit their masters to withdraw them and the States in which they reside from the Government to which the labor of the one and the productions of the other has contributed more than any other portion of our country to make it what it was a little more than one year ago—the proudest, richest, and most prosperous on the globe.

Mr. President, I was about to call the attention of the Senate to the third section of the bill. This section makes it the duty of the President to provide for the transportation, colonization, and settlement of such emancipated negroes as may be willing to emigrate to some tropical climate, to be selected for them by the Executive. The bill fails to make provision for the negroes who shall be unwilling to leave the land of their birth and the home of their nativity. That this latter class will comprise at least ninety-nine hundredths of the slaves, is a fact known to all acquainted with the race, and I presume is known to the advocates of this measure in the Senate. I see from a speech reported in the Globe, made by a member of the House, concurring in opinion with the advocates of this measure, that the negro's attachment to his native land is well understood by the member, [Mr. Davis, of Pennsylvania.] I will read the extract to which I refer:

"Yet of the 53,000 free blacks in Pennsylvania, only 15,000 are not native born. Why have this people, with so many reasons to impel them, not migrated to the North? Why do they adhere with such persistence to their native soil? This love of home is strikingly illustrated by the following figures from the census of 1850: Of the 54,333 free blacks in the State of Virginia, only 533 were born out of the State; of the 18,073 in Delaware, only 1,141; of the 74,723 in Maryland, only 1,367; and of the 27,463 in North Carolina, but 645 were born out of the State; or of a total free population in these four States of 174,000, only 3,686 are foreign born, or a trifle over two per cent. This shows plainly that the black is not migratory, and that our people have little to apprehend from a race thus deep-rooted in the soil of the South. Is it not doing violence to right reason and the facts to assume that the negro would abandon the home that he has clung to under such adverse circumstances, with the first step towards rendering his existence tolerable? I am satisfied that gentlemen have allowed their prejudice to cloud their judgment; and when they come to review the facts, they will agree with me that, with emancipation, the exodus of the negro will be southward, and that soon, of all the free blacks resident in the cold North, one half or more would take up the line of march to the sunny land of Dixie.

"Where the yam will grow, the cotton blow,
They'll raise the rice and corn;
And never they'll fear if never they hear
The driver blow his horn."

Assuming that the attachment of the negro to his "native soil" is as Mr. Davis represents, and that all the free negroes in the non-slaveholding States are, as he intimates, to be colonized for settlement in the now slaveholding States, and that the advocates of this bill so understand their proposed schemes of emancipation, colonization, and settlement, the conclusion that it is their purpose to Africanize American society in the southern States is irresistible. If this be their purpose, I assure them they are mistaken. Self-preservation would compel the States within which slavery now exists, if the slaves were emancipated, either to expel them from the State or reenslave them. If expelled, where would they go? The non-slaveholding States, many of them, exclude them by express constitutional provision; others would do so,

for we are told by the advocates of emancipation that the negro is not to be permitted, when liberated, to come into their States. What follows? Extermination or reenslavement. Can it be possible that the Christian sentiment of the North, which it is said demands the abolition of slavery, desires the extermination of the negro race? Such, I trust, is not the sentiment of any considerable number of persons anywhere. The result would be that the States would do what they have the acknowledged constitutional right to do, reenslave them. The wellbeing, if not the existence, of the white race would demand their reenslavement, and it would be done. I ask, then, what good to either race would be accomplished by the passage of this section of the bill?

The Senator from Illinois, [Mr. TRUMBULL,] the patron of this bill, as I understood him, admitted the want of power in Congress to forfeit real estate for a longer period than the life of the owner. If I am in error, I desire to be corrected.

Mr. TRUMBULL. The Senator certainly misunderstood me. I said that I was inclined to think Congress could not forfeit the real estate of a convicted traitor longer than for life; but the bill which is pending proposes not to forfeit the real estate of convicted traitors, but to forfeit the property of persons who cannot be convicted, who are beyond the reach of judicial process. It is not a bill against persons who can be reached by judicial process.

Mr. CARLILE. I thank the Senator, because I desire to understand his position. I now understand him to say that, while it is not in the power of Congress, aided by the judicial department of the Government, upon trial and conviction for treason, to confiscate the real estate of the traitor beyond his life, Congress can yet of itself, without the intervention of the judicial department of the Government, inflict that punishment, not upon a convicted traitor, but upon one who in the eye of the law is presumed to be innocent until he is proven to be guilty. That is to say, you may without conviction impose a heavier penalty than can be imposed upon guilt being ascertained and judgment being pronounced. It is worse than I supposed. Such a proposition I shall not detain the Senate by discussing.

The Senator referred us, in his argument, to several decisions of the Supreme Court. I have examined those cases. Not one of them bears upon his proposition. In Brown's case the court seem to say that Congress can by legislation provide for the confiscation of enemy property. This is not authority for the confiscation of the private property of our own citizens, although they may be rebels. The Constitution provides against the confiscation or forfeiture of the estate of the latter in as plain language as it forbids the enactment of bills of attainder. That this bill is a bill of attainder, as such bills have been defined by our own judges, is beyond the shadow of a doubt. The Supreme Court has said that "a bill of attainder may effect the life of an individual, or may confiscate his property, or both." Judge Tucker says a bill of pains and penalties is a bill of attainder. The true definition of a bill of attainder, is any bill providing for the infliction of punishment by Congress for po-

litical offenses, without the intervention of the judicial department of the Government—without legal trial. Such bills the Constitution prohibits and forbids, and takes care to secure to the citizen a jury trial, and to secure him from being deprived of his property without due process of law. Congress can as well pass a bill making it the duty of the President to order the seizure by such officers, military or civil, as he may designate, of all persons in the seceded States, and direct the officers so seizing them to hang them without the intervention of judge or jury, as they can pass this bill which makes it the duty of the President to order such officers as he may designate, military or civil, to seize the property of the citizens of the seceded States, and confiscate it.

But, say the advocates of confiscation, there ought to be such a power, and therefore we will enact such a law. How different such sentiments from those given us by the Father of his Country. Washington says:

"If, in the opinion of the people, the distribution or modification of constitutional powers be wrong in any particular, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

Mr. President, the advocates of this bill would have us believe that although in time of peace the Constitution is the paramount law of the land, in time of war it ceases to be of binding obligation, and therefore feeling the want of constitutional power they seek to show, by citations from Grotius and others, that such a measure is authorized by the law of nations, forgetting that the laws of war fix the rules by which separate and independent nations are to be governed when engaged in war with each other. Senators who contend for the power to enact this bill ignore the great fact which lies at the foundation of all our institutions, that this is a Government of limited powers, clearly defined in a written Constitution forbidding the exercise of any power not authorized by it, and denying to the legislative branch of the Government the authority to enact any law which is not authorized by a grant of power.

It is unnecessary to detain the Senate by a reference to authorities to show that this is a Government of limited powers, such as I have stated it to be. It is an admitted truth that no man, I take it, at this day will dispute. But, Mr. President, I deny that the laws of war authorize any such measure as this bill proposes; and I go further, and deny that even if sanctioned by the laws of war Congress could enact any such law, unless the power were given in the Constitution. I deny, as Senators seem to suppose, that in time of rebellion the Constitution is a dead letter. I deny what the rebels assert, and what Senators seem to admit, that the act of rebellion has destroyed constitutional government, and left us at the mercy of the unrestrained will of Congress. Let us see what Vattel says of these confiscation propositions. In speaking of the ancient rules of war, he says:

"But at present war is less dreadful in its consequences to the subject; matters are conducted with more humanity;

one sovereign makes war against another sovereign, and not against the unarmed citizens. The conqueror seizes on the possessions of the State, the public property, while private individuals are permitted to retain theirs. They suffer but indirectly by the war; and the conquest only subjects them to a new master.

"But if the entire State be conquered, if the nation be subdued, in what manner can the victor treat it, without transgressing the bounds of justice? What are his rights over the conquered country? Some have dared to advance this monstrous principle, that the conqueror is absolute master of his conquest; that he may dispose of it as his property; that he may treat it as he pleases, according to the common expression of treating a State as a conquered country; and hence they derive one of the sources of despotic government."—*Vattel's Law of Nations*, book 3, chap. 13, secs. 200, 201.

In pursuing the same subject, he says:

"But if the conqueror thinks proper to retain the sovereignty of the conquered State, and has a right to retain it, the same principle must also determine the manner in which he is to treat that State. If it is against the sovereign alone that he has just cause of complaint, reason plainly evinces that he acquires no other rights by his conquest than such as belonged to the sovereign whom he has dispossessed, and, on the submission of the people, he is bound to govern them according to the laws of the State."—*Vattel's Law of Nations*, book 3, chap. 13, sec. 201.

Without detaining the Senate, I will read the concluding sentence of another paragraph on the same subject, wherein the writer says:

"Surely it is enough that an innocent people suffer the calamities of war: must even peace itself become fatal to them?"—*Ibid.*, book 3, chap. 13, sec. 390.

And again he says:

"For the same reason, he who declares war does not confiscate the immovable property"—

this bill proposes to do that—

"possessed in his country by his enemy's subjects. By permitting them to purchase and possess such property, he has in that respect admitted them into the number of his subjects."—*Ibid.*, book 3, chap. 5, sec. 233.

Justice Story, in treating of the clause in the Constitution giving to Congress power to punish treason, but forbidding the forfeiture of the estate for a longer period than life, says:

"Two motives probably concurred in introducing it as an express power. One was, not to leave it open to implication whether it was to be exclusively punishable with death, according to the known rule of the common law, and with the barbarous accompaniments pointed out by it, but to confide the punishment to the discretion of Congress. The other was, to impose some limitation upon the nature and extent of the punishment, so that it should not work corruption of blood or forfeiture beyond the life of the offender."—*Story on the Constitution*, book 3, sec. 1297.

Again, he says:

"Bills of attainder, as they are technically called, are such special acts of the legislature as inflict capital punishments upon persons supposed to be guilty of high offenses, such as treason and felony, without any conviction in the ordinary course of judicial proceedings."—*Ibid.*, book 3, sec. 1344.

I will not detain the Senate by reading the whole paragraph, but I will call the attention of the Senate to this:

"The punishment has often been inflicted without calling upon the party accused to answer, or without even the formality of proof; and sometimes, because the law, in its ordinary course of proceedings, would acquit the offender. The injustice and iniquity of such acts, in general, constitute an irresistible argument against the existence of the power. In a free Government it would be intolerable; and in the hands of a reigning faction it might be, and probably would be, abused to the ruin and death of the most virtuous citizens."—*Ibid.*, book 3, sec. 1344.

Mr. President, this bill does not forfeit the pri-

vate property of alien enemies, inhabitants of the enemy's country, but it proposes to take all the property belonging to our own citizens who have been compelled to submit to a power they could not resist, which claims to be both a *de facto* and a *de jure* government, and which does possess the physical force to compel obedience to it from those within its limits. This Government—the Federal Government—which claims the allegiance of these citizens has been unable to relieve them or to protect them in their assertion of that allegiance. Are not allegiance and protection mutual obligations, and when you fail to afford the one will you punish for the want of the other, when it was not in the power of the citizen to give it, and when, if proclaimed, it would have cost him his life?

It should never be forgotten, but always borne in mind, that the struggle in which we are engaged is not on our part, constitutionally speaking, a war. We are not engaged in war. Congress makes war, declares war. Congress has made no such declaration; nor has Congress declared, as in the case of the war with Mexico, that war exists. When we speak of war generally we mean public war. If we do not, we use some expression to define the kind of war of which we speak, as civil war, servile war, and the like. The war spoken of by the writers on the laws of war quoted in this debate is public war, that which takes place between nations or sovereigns, where one nation seeks to enforce its alleged rights against another and separate nation; where, in the language of Scripture, "nation lifts up the sword against nation." The struggle in which we are now engaged is not, strictly speaking, even a civil war; but is, on our part, an effort to suppress insurrection, as an extract from Vattel will show. The war of the Revolution was a civil war. Why? Because there was justice on the side of those who were in rebellion. They had right on their side; and whenever you speak of a civil war to a man who understands its definition, you admit that there is some justice for that war. I deny that there is any justice for this rebellion. It is an unholy and wicked effort on the part of ambitious men to enslave the people and make them subservient to their own wicked purposes. Senators will mark the distinction which Vattel makes, because I shall call their attention to the definition of insurrection presently:

"The name of *rebels* is given to all subjects who unjustly take up arms against the ruler of the society, whether their view be to deprive him of the supreme authority, or to resist his commands in some particular instance, and to impose conditions on him."

Sir, are not these people rebels?

"A popular commotion in a concourse of people who assemble in a tumultuous manner, and refuse to listen to the voice of their superiors, whether the design of the assembled multitude be leveled against the superiors themselves, or only against some private individuals. Violent commotions of this kind take place when the people think themselves aggrieved, and there is no order of men who so frequently give rise to them as the tax-gatherers. If the rage of the malcontents be particularly leveled at the magistrates, or others vested with the public authority, and they proceed to a formal disobedience or act of open violence, this is called a *rebellion*. When the evil spreads, when it infects the majority of the inhabitants of a city or province, and gains such strength that even the sovereign is no longer obeyed, it is usual more particularly to distinguish such a

disorder by the name of *insurrection*."—Vattel, book 3, chap. 18, sects. 288, 289.

Now, what is the definition of civil war?

"When a party is formed in a State who no longer obey the sovereign, and are possessed of sufficient strength to oppose him—or when, in a republic, the nation is divided into two opposite factions, and both sides take up arms—this is called a *civil war*. Some writers confine this term to a just insurrection of the subjects against their sovereign, to distinguish that lawful resistance from *rebellion*, which is an open and unjust resistance. But what appellation will they give to a war which arises in a republic torn by two factions, or in a monarchy, between two competitors for the crown? Custom appropriates the term of '*civil war*' to every war between the members of one and the same political society. If it be between part of the citizens on one side, and the sovereign with those who continue in obedience to him on the other, provided the malcontents have any reason"—

mark—

"for taking up arms, nothing further is required to entitle such disturbance to the name of *civil war*, and not that of *rebellion*."—Vattel's *Law of Nations*, book 3, chap. 18, sec. 292.

Sir, I deny that this is a civil war. I deny that there was anything to justify the men who inaugurated it. I pronounce it a rebellion, and those who are engaged in it are rebels.

I deny, therefore, that if Congress were not restrained by the Constitution the laws of war would authorize or justify the enactment of such a law as the bill proposes; but whether right or wrong in this proposition, I plant myself upon the Constitution, deny the power, and challenge contradiction. I assert what will not be denied, that, prior to the rebellion, the advocates of this bill themselves admitted the want of power in Congress to interfere with slavery, or to change the status of the slave in the slaveholding States. No Senator has shown, or can show, any grant of power in the Constitution to warrant the enactment of such a law, or from which the power to do so is deducible. The want of such a power is conclusive, and should end the discussion.

I will read, however, from the eighty-fourth number of the *Federalist*, written by Mr. Hamilton, who certainly is believed at this day to have claimed as large powers as the most latitudinous construction could give to the Constitution. He is endeavoring to show why a bill of rights was not necessary:

"I go further, and affirm that bills of rights, in the sense and to the extent they are contended for, are not only unnecessary in the proposed constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and on this very account would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done, which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"—*Federalist*, p. 535.

Again, I call the attention of Senators to the very first section of the first article of the Constitution itself:

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Then, sir, it is only the legislative power granted in the instrument that the Senate and House of Representatives can exercise, and none other. I go further, and show that not only is there no such power given in the Constitution, but the ex-

ercise of such a power is expressly forbidden; first by the clause declaring that

"No bill of attainder or *ex post facto* law shall be passed."

Again, by the clause declaring,

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attained."

Again, by the fifth article of the amendments,

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

Again, by the seventh article of the amendments:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law."

Where but twenty dollars is involved, the right of trial by jury is secured, and admitted to be secured by the Constitution; and yet under this bill all that the citizen may have is swept from him without even the first process known to our courts being served upon him.

It is incumbent upon Senators who, prior to the rebellion, admitted that Congress could not interfere with slavery in the States where it exists, but who are now the advocates of this bill, to show the clause in the Constitution conferring upon Congress the power claimed. Congress has the power to legislate for the suppression of insurrection, but the insurrection must be suppressed and the rebellion put down by constitutional means, and in a constitutional way, otherwise all that would be necessary to overthrow the Constitution and destroy the Government under it, would be to incite insurrection. If Congress were not to suppress insurrection by constitutional means and in a constitutional way, there would be nothing for the loyal citizen to fight for. He readily obeys his country's call, and enrolls himself in its military service. Why, and for what? That the Constitution may be overthrown, that his fellow-citizens in the rebellious States may be deprived of their constitutional rights secured to them by the common bond? No, sir; God forbid. He takes up arms for no such purpose; he enlists under the banner of his country to uphold it and all the rights of which it is the emblem. He spills his blood that the constitutional Government under which he has lived may be preserved, and all his constitutional rights maintained. It was for this, and this alone, as I know full well, that the brave Lander sacrificed his life. Patriot soldier he was. Long will his memory live in the hearts of the loyal people of my State. He it was that led our troops to battle and to victory at Philippa and Rich Mountain. It is one of the proudest recollections of my life that I urged upon the President and his Cabinet his nomination as brigadier general. I reflect with satisfaction upon my agency in procuring his nomination. I will not now check the unbidden tear that fills my eyes while I recall be-

fore me his manly form and reflect upon his heroic courage. No man ever guarded more carefully the honor of his country, or more scrupulously protected the rights of private property.

Mr. President, Massachusetts's son was made a Virginia brigadier. Your records will show that it was Frederick W. Lander, of Virginia, that the President nominated and the Senate confirmed. Virginia adopted him as her son, and she claims the privilege to mingle her tears with those of his own native State. This is as it should be between States united as are the States of this Union, under one Constitution, having one country and one destiny. Let us remember that to the united efforts, in war and in peace, of Massachusetts and Virginia and their sister States we are indebted for our glorious Constitution. I would acknowledge also our indebtedness to Massachusetts for loaning to us, through her Governor, in our darkest hour last spring, two thousand stand of arms. Such recollections are themes upon which I love to dwell. Would to God there had been in the past nothing inconsistent with the kind and friendly service to which I have referred. Let us bury forever all recollection of what has occurred to interrupt the kindly relations between the two old States or between the sections of our common country. Let us again be a united and a happy people, animated by that fraternal feeling so necessary to our peace and prosperity as a nation. God grant that again we may be bound together by the silken cord of brotherly love, never to be broken; each State vying with the other in the kindly discharge of every constitutional obligation and all frowning indignantly upon the first dawning of any attempt to alienate the sections or to disturb the harmony of the whole.

Mr. President, the Senator from Maine the other day argued that we were engaged in a war, and contended that Congress had the power to do what he said the law of nations authorized sovereign and independent nations engaged in public war to do. Assuming his positions, he argued to prove what the rebels have been striving to make the world believe, that the so-called confederate States were a nation and an independent Power, entitled to be recognized as a belligerent Power, and therefore, according to his assumption, as we have the right to confiscate the property of a belligerent Power, we have the right to pass this bill and confiscate, not the property of the belligerent, but all the property, lands, and goods of private individuals inhabiting the domain over which the government of this belligerent Power extends. If the Senator be right, we should cease to complain of England for so far recognizing the so-called confederate States as a belligerent as to maintain a neutral position between us.

The Senator from Maine follows the Representative from Kansas, from whose speech I have quoted, and contends that the conduct of the rebels invests this nation with the high prerogatives of war. In other words the unconstitutional acts of rebels confer upon Congress powers not delegated by the Constitution. I humbly submit to the Senator if he has not done what no foreign Government has yet done, and what we would be ready to resent if any foreign Government were

to do—recognized by his speech the pretended confederate government. He has gratified the conspirators by dignifying their rebellious acts into acts of war. He would concede to them what they claim, that they are not engaged in rebellion, but in waging war against a foreign Government; for the Senator from Maine has arrived at the conclusion, to use his own language, that we are in a state of involuntary war with a belligerent Power, and therefore he would confiscate the property, not of the belligerent, for the belligerent has none—the custom-houses, forts, dock-yards, mints, &c., are ours—but he would confiscate the property and free the slaves of private individuals. I confess I do not understand the Senator's logic. We are not at war, Mr. President, with a belligerent Power, but with rebellious citizens. The Senator from Maine asks how shall it ever be known when we are in a state of war? I reply, Congress will inform him. The Constitution confers upon Congress the power to declare war.

I object to this bill because it violates an express provision of the Constitution in this: the Constitution declares that no person shall be deprived of life, liberty, or property without due process of law, and that private property shall not be taken for public use without just compensation. This bill, as the Senator from Illinois explained a little while ago, without judicial accusation or trial, would sweep from the entire population of the seceded States the property of every person residing therein. It dispenses with the judicial tribunals of the country, condemns without a hearing, and punishes without a trial. In short, it does what the Constitution expressly forbids—executes itself. I inquire, was there ever before such a proposition submitted to any legislative assembly in any civilized country on the face of the earth?

In the same letter, to which I before referred, Mr. Hamilton quotes Justice Blackstone:

"To bereave a man of life," says he, "or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary Government."

And as a remedy for this fatal evil, he is everywhere peculiarly emphatical in his encomiums on the *habeas corpus* act, which in one place he calls "the bulwark of the British constitution." (Federalist, p. 533.)

This paragraph from Justice Blackstone cited, as I have shown, by Mr. Hamilton, in the number of the Federalist to which I have referred, shows conclusively that such a proposition as this would not be authorized by the Constitution, and would be exercised only by the veriest despotism.

The friends of this measure contend that it is necessary to the suppression of the rebellion. How can this be? It can only be enforced where rebellion has never existed, or where it has been suppressed. How can you execute this law in those States and districts where all your laws are successfully resisted? Before you confiscate the property of rebels you must first be able to possess yourselves of it. You can only do this where

your armies have preceded you, and where the rebels have been dispersed. This bill can only be enforced in the districts occupied by your Army or by loyal citizens who recognize their obligation to the Constitution and laws, and who will aid you in their enforcement. If the mere passage of an act would put down the rebellion, all you have to do is to pass an act confiscating all the powder in the seceded States, and the rebellion is ended at once. The absurdity of such an effect to be produced by the mere passage of a bill to operate in States where you are unable to enforce any law must be apparent to all. This bill, if it become a law, like all of your laws, will remain upon your statute-book, a dead letter in the seceded States until you shall have crushed out the rebellion and suppressed the insurrection. When that is done, this bill cannot aid in suppressing what is not in existence.

Mr. President, is it expedient to beggar six millions of your people? Will the avowal of such a purpose have the effect to strengthen the loyal sentiment of the seceded States? Will it confirm and bring to your aid the hesitating and doubtful, or will it not rather, if that be possible, make more desperate those now arrayed against you, increase their power, and bring to them an active strength that has up to this time kept aloof from the struggle? What will be its effect upon the thousands that have been impressed into the rebel army who are now anxiously looking for an opportunity to rush to your standard? There is scarcely a family of any size in all the loyal portion of my State that has not one or more members of it, or some one connected with it in the rebel service, or who have not in some way aided the rebellion. It has divided parents from their children, brother from brother, and separated husband and wife. I will, with the permission of the Senate, read an extract from a letter I received yesterday from a highly respectable lady, a resident of northwestern Virginia, a daughter of a late judge of the United States, and a grand-daughter of a former Governor of the State of Ohio, and a member of the Cabinets of Mr. Madison and Mr. Monroe.

"I have never had a line from my husband since last August, and am not in communication with him at all. It is only through Mrs. —, who returned a fortnight ago, that I know his whereabouts. I do not and never have thought secession a practical or desirable move. I have been here with my children making every effort to send or to go to Dixie to induce him to return. You know that I was possessed of sufficient means to at least live comfortably before our marriage, but as it consisted of notes, bonds, and money, it has been almost all reconverted into other property, and can be all taken. I cannot believe it is the intention and desire of the wise and humane rulers of this country to throw upon the world without means of subsistence unfeeling women and innocent children."

Mr. President, is it expedient to deprive decrepit age and helpless infancy of the means of support? If we do this thing, the cry of the widow and the wail of the orphan will go up to heaven, and the God of the widow and the Father of the fatherless will say in the storm-cloud: "Vengeance is mine, and I will repay, saith the Lord."

The incendiary press of this country seize upon the hour that exhibits to the gaze of the world the heart-rending spectacle of the only Government on

earth where man enjoys as much liberty as is consistent with his nature, struggling for existence, and would add to our difficulties by reviving sectional feuds by which we have been torn and distracted in order to secure the accomplishment of the wishes of those who have for years denounced the Constitution of Washington and his compatriots as a covenant with death and a league with hell. This, too, at a moment when the efforts of all should be directed to the single object of extinguishing the flames lighted by the fires of rebellion. The temple of liberty is on fire, and instead of an honest effort on the part of all to save the noble structure, the anti-slavery element is engaged in an unholy effort to destroy the southern wing, not seeming to know or care that the destruction of part involves the loss of the whole. The rebels have applied the torch, and the anti-slavery element say, let it go, unless the entire southern portion is shorn of its fair proportions, its dimensions narrowed and contracted, and its occupants made dependent upon our will and subservient to our views. These are they who attribute this wicked rebellion to the existence of slavery; and who, by misrepresentations, would lead the people they ought to honestly instruct to war upon the Constitution. From such teachings we are warned by the Father of his Country in his Farewell Address—

"One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts."

These are they who say if there had been no slavery there would have been no rebellion. As well might they attribute the rebellion to the Union, for if there had been no Union there would have been no rebellion against it. Has the country forgotten that thirty years ago a similar attempt at rebellion was initiated, and would have grown to as great proportions, perhaps, as the present, if a Buchanan instead of a Jackson had been the Chief Magistrate? And do we not know that the tariff was then the pretext? Who, at that day, insisted that commerce should be destroyed, or said if there had been no commerce there would have been no attempt at rebellion? No, Mr. President, Mr. Yancey and his associates spoke the truth when they wrote to the British minister "that it was from no fear that the slaves would be liberated that secession took place." The true cause, the real motive, is the same that influences the men who now clamor that this shall be made an anti-slavery war. They would convert the holy struggle in which we are engaged for a restoration of the Union into a wicked crusade against slavery, bringing down upon us the just vengeance of a righteous God and the denunciations of the whole civilized world. So long as our efforts are confined to a vindication of the Constitution and a restoration of the Union, we have the sympathies of the good throughout the earth, and, I sincerely believe, the approval of Heaven; for are we not engaged in a struggle to maintain religious as well as civil liberty? The cause of the rebellion was a determination on the part of its authors to rule or ruin. The opposition to a restoration of the Union is to be attributed to the same cause. The restoration of the Union buries in the same grave

abolitionists and secessionists. In life their labors have tended to the same end; it is fitting that they should be consigned to the same grave. May Heaven speed their demise.

Mr. President, it is for us to preserve the best Government on earth, and to keep inviolate our plighted faith. The passage of this bill would be a violation of the nation's faith as pledged through the Executive and Congress, and a fraud upon our people. What was the call of the President to which your citizen soldiers so promptly responded? Was it not to aid him in the enforcement of the laws, protect the nation's property, and to enable him to keep his oath of office, by which he swore to preserve, protect, and defend the Constitution, and to see that the laws were faithfully executed? Did not the President in his inaugural address declare:

"I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."

And did he not, in his annual message to Congress, in July last, say:

"Lest there be some uneasiness in the minds of candid men as to what is the course of the Government towards the southern States, after the rebellion shall have been suppressed, the Executive deems it proper to say it will be his purpose then, as ever, to be guided by the Constitution and the laws; and that he will probably have no different understanding of the powers and duties of the Federal Government relating to the rights of the States and the people under the Constitution, than that expressed in the inaugural address."

Did not your present General-in-Chief, in May last, when he entered my State at the head of our brave friends from Ohio and Indiana who responded to the President's call, assure us that he came not to make war upon us or our institutions, but that he came to crush out treason and deliver us from the power of traitors. Hear him:

"Notwithstanding all that has been said by the traitors to induce you to believe that our advent among you will be signalized by interference with your slaves, understand one thing clearly, not only will we abstain from all such interference, but we will, on the contrary, with an iron hand, crush any attempt at insurrection on their part."

What was the mission of the brave Burnside, and the equally brave Goldsborough, as declared by them to the people of North Carolina? They shall speak for themselves:

ROANOKE ISLAND, NORTH CAROLINA,
February 18, 1862.

To the People of North Carolina:

The mission of our joint expedition is not to invade any of your rights, but to assert the authority of the United States, and to close with you the desolating war brought upon your State by comparatively a few bad men in your midst.

Influenced infinitely more by the worst passions of human nature than by any show of elevated reason, they are still urging you astray to gratify their unholy purposes.

They impose upon your credulity by telling you of wicked and even diabolical intentions on our part; of our desire to destroy your freedom, demolish your property, liberate your slaves, injure your women, and such like enormities—all of which, we assure you, is not only ridiculous, but utterly and willfully false.

We are Christians as well as yourselves, and we profess to know full well, and to feel profoundly, the sacred obligations of the character.

No apprehensions need be entertained that the demands of humanity or justice will be disregarded. We shall inflict no injury, unless forced to do so by your own acts, and upon this you may confidently rely.

Those men are your worst enemies. They, in truth, have drawn you into your present condition, and are the real disturbers of your peace and the happiness of your firesides.

We invite you, in the name of the Constitution, and in that of virtuous loyalty and civilization, to separate yourselves at once from these inalienable influences, to return to your allegiance, and not compel us to resort further to the force under our control.

The Government asks only that its authority may be recognized; and we repent, in no manner or way does it desire to interfere with your laws, constitutionally established, your institutions of any kind whatever, your property of any sort, or your usages in any respect.

L. M. GOLDSBOROUGH, *Flag Officer,*
Commanding North Carolina Blockading Squadron.
A. E. BURNSIDE, *Brigadier General,*
Commanding Department of North Carolina.

What was the order of the accomplished officer, gallant soldier, and I may add, enlightened statesman, General Halleck, as his troops were about to advance into Tennessee?

Proclamation of General Halleck.

HEADQUARTERS DEPARTMENT OF MISSOURI,
St. Louis, February 23.

The major general commanding the department desires to impress upon all officers the importance of preserving good order and discipline among their troops as the annals of the West advance into Tennessee and the southern States.

Let us show to our fellow-citizens in those States that we come merely to crush out rebellion, and restore to them peace and the benefits of the Constitution and the Union, of which they have been deprived by selfish and unprincipled leaders. They have been told that we come to oppress and plunder. By our acts we will undeceive them. We will prove to them that we come to restore, not to violate, the Constitution and the laws. In restoring to them the glorious flag of the Union, we will assure them that they shall enjoy under its folds the same protection of life and property as in former days.

Soldiers! let no excess on your part tarnish the glory of our arms!

The order heretofore issued in this department, in regard to pillaging and marauding, the destruction of private property, and the stealing or concealment of slaves, must be strictly enforced. It does not belong to the military to decide upon the relation of master and slave. Such questions must be settled by the civil courts. No fugitive slave will therefore be admitted within our lines or camps, except when specially ordered by the general commanding.

Women and children, merchants, farmers, mechanics, and all persons not in arms, are regarded as non-combatants, and are not to be molested either in their persons or property. If, however, they aid and assist the enemy, they become belligerents, and will be treated as such. As they violate the laws of war, they will be made to suffer the penalties of such violation.

Military stores and the public property of the enemy must be surrendered, and any attempt to conceal such property, by fraudulent transfer or otherwise, will be punished, but no private property will be touched unless by order of the general commanding. Wherever it becomes necessary to obtain forced contributions for the supply and subsistence of our troops, such levies will be made as light as possible, and be so distributed as to produce no distress among the people. All property so taken must be receipted and fully accounted for, as heretofore directed.

These orders will be read at the head of every regiment, and all officers are commanded to strictly enforce them.

By command of Major General Halleck.

N. H. McLEAN, *Adjutant General.*

How did Congress speak in February, 1861, upon the motion, I believe, of my friend from Ohio, [Mr. SHERMAN:]

"Resolved, That neither the Federal Government nor the people or governments of the non-slaveholding States have a purpose or a constitutional right to legislate upon or interfere with slavery in any of the States of the Union."

"Resolved, That those persons in the North who do not subscribe to the foregoing proposition, are too insignificant in numbers and influence to excite the serious attention or alarm of any portion of the people of the Republic, and that the increase of their numbers and influence does not keep

pace with the increase of the aggregate population of the Union."

How, again, did Congress speak in July last, in the House of Representatives, upon the motion of the hero, patriot, and sage, the venerable CRITTENDEN:

"Resolved by the House of Representatives of the Congress of the United States, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in arms against the constitutional Government, and in arms around the capital; that in this national emergency, Congress, banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease."—*Journal House of Representatives*, first session, Thirty-Seventh Congress, p. 123.

Shall it be said that this resolution was adopted under the fearful excitement growing out of the battle of the day before, at Bull Run? No, sir; never will the nation allow any such intimation to be made against its honor. What said the Senate in July last upon the motion of the distinguished Senator from Tennessee, [Mr. JOHNSON?]

"Resolved, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in revolt against the constitutional Government and in arms around the capital; that in this national emergency Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union, with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease."—*Senate Journal*, first session Thirty-Seventh Congress, pp. 84, 85.

Now, I call the attention of the Senate to the vote upon that resolution. Every Senator present and voting, save one, voted for that resolution. It is significant, and the country should know who it was that, on the 25th day of July, refused to vote for that resolution. Breckinridge, now an open traitor at the head of rebel forces, Johnson of Missouri, in the same position, Polk, in the same position, POWELL, and TRUMBULL. I was about to do my friend from Illinois, the chairman of the Judiciary Committee, injustice. I find, what I did not notice before, that his name is recorded with the names of Breckinridge, Johnson of Missouri, Polk, and POWELL, against the resolution. He is consistent, I must confess.

Mr. President, what did the distinguished gentleman at the head of the State Department, Mr. Seward, in his letter of instructions, in April last, to Mr. Dayton, our minister to Paris, say:

"I need not further elaborate the proposition that the revolution is without a cause. It has not even a pretext. It is just as clear that it is without an object. Moral and physical causes have determined inflexibly the character of each one of the Territories over which the dispute has arisen, and both parties, after the election, harmoniously agreed on all the Federal laws required for their organization. The Territories will remain in all respects the same, whether the revolution shall succeed or shall fail. The condition of slavery in the several States will remain just the same whether it succeed or fail. There is not even a pre-

text for the complaint that the disaffected States are to be conquered by the United States if the revolution fail; for the rights of the States and the condition of every human being in them will remain subject to exactly the same laws and forms of administration whether the revolution shall succeed or fail. In the one case the States would be federally connected with the new confederacy; in the other they would, as now, be members of the United States; but their constitutions and laws, customs, habits, and institutions in either case will remain the same.

"It is hardly necessary to add to this incontestable statement the further fact that the new President, as well as the citizens through whose suffrages he has come into the Administration, have always repudiated all designs whatever and whenever imputed to him and them of disturbing the system of slavery as it is existing under the Constitution and laws. The case, however, would not be fully presented if I were to omit to say that any such effort on his part would be unconstitutional; and all his actions in that direction would be prevented by the judicial authority, even though they were assented to by Congress and the people."

I respectfully call upon the Senator from Illinois, taking the position that he does, to read at his leisure this last paragraph quoted from our Secretary of State, a statesman who has spent the greater portion of his life in the service of his country.

Think you, Mr. President, that these declarations had nothing to do with our successes at Roanoke, Fort Henry, and Fort Donelson? I would not detract in the slightest degree from the honor won by our brave soldiers, but I assert it as my honest belief that we owe much to the Union sentiment that was in the confederate service. If the rebel force had been animated by the spirit that inaugurated this rebellion, it would never have surrendered as it did, and it is the realization of this fact that made Jeff Davis admit in his message that they had undertaken more than they could achieve. The same fact was pressing upon the rebel officer who wrote to the Richmond Examiner the extract I read:

"The Roanoke affair is perfectly incomprehensible. The newspapers are filled with extravagant laudations of our valor; the annals of Greece and Rome offer no parallel; whole regiments were defeated by companies, and we yielded only to death. Our men finally surrendered 'with no blood on their bayonets,' and what is the loss? Richmond Blues, two killed and five wounded; McCulloch Rangers, one killed and two wounded; the other four companies lost in all two killed and eleven wounded. Comment is needless. The whole army had better surrender at once, for it will eventually come to it."

I think so, too. I concur in opinion with him.

Let us never, Mr. President, violate our faith. It has been well remarked by some writer that 'the chief of all powers is moral power, and I believe we owe more to-day to our moral position which we secured by the declarations I have read than we do to our armies, great as I know our obligations are to them, which obligations I take pleasure in acknowledging. Think you, Mr. President, if General Halleck and Commodore Foote had announced to the people of Tennessee that their purpose was to confiscate their property and turn them houseless and homeless upon the world, and to free their slaves, Nashville and Clarksville would have been ours? Would they not have been reduced to ashes, and would not their people have rushed with eagerness to the field and arrayed themselves under the standard of rebellion? Pass this bill, disregard the tears of widowhood and the cry of orphans, visit upon the children to the third and fourth generation the sins of the father, im-

poverish the wife and pauperize the child, as this bill proposes to do, and the mother, instead of taking upon her knee her lisping babe to instill into his infant mind sentiments of love for his country and gratitude for its beneficence, will cause her child to kneel by her side and swear undying hate and eternal hostility to the Government that took from her the means of support, and turned mother and child beggars upon the world. Pass this bill, and interminable, never-ending war will be the result.

"Oh shame to men! devil with devil damned
Firm concord holds; men only disagree
Of creatures rational, though under hope
Of heavenly grace, and God proclaiming peace,
Yet live in hatred, enmity, and strife
Among themselves, and levy cruel wars,
Wasting the earth, each other to destroy."

This bill proposes to do what the President forbids General Frémont from doing, and what, in the opinion of the President, would have thrown Kentucky against us, and alarmed the Union men of the South. So impressed was the President of the danger to the cause of the country by the announcement of such a policy by a subordinate military officer, that he addressed to him the following letter:

WASHINGTON, D. C., September 2, 1861.

MY DEAR SIR: Two points in your proclamation of August 30 give me some anxiety.

First: Should you shoot a man, according to the proclamation, the confederates would very certainly shoot our best men in their hands, in retaliation; and so, man for man, indefinitely. It is, therefore, my order that you allow no man to be shot, under the proclamation, without first having my approbation or consent.

Second: I think there is great danger that the closing paragraph, in relation to the confiscation of property, and liberating slaves of traitorous owners, will alarm our southern Union friends, and turn them against us—perhaps ruin our rather fair prospect for Kentucky. Allow me, therefore, to ask that you will, as of your own motion, modify that paragraph so as to conform to the first and fourth sections of the act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6, 1861, and a copy of which act I herewith send you. This letter is written in a spirit of caution, not of censure. I send it by a special messenger, in order that it may certainly and speedily reach you.

Yours very truly,
To Major General FRÉMONT.

A. LINCOLN.

Mr. President, the path of duty is clear. Let us march steadily on observing the line of policy laid down by ourselves. Let us not violate our own solemn declarations by which we are bound not only to our own people but to the whole world. The declarations of our Chief Magistrate and our own solemn resolves have gone to the world, and have been read and approved of in Europe as well as upon this continent. We have a law for the punishment of treason; enforce it; try, convict, and hang by the neck the traitor leaders, the authors of this wicked conspiracy to destroy our Government. Grant to the rank and file who have been seduced and unwillingly and unwittingly forced into the rebellion a pardon for past offenses. Leave it to the loyal Legislatures of the States, which will have to bring back into the Union their respective States, to exclude from office all whose lives are spared, who willingly participated in this rebellion. In this way you will punish the guilty and protect the innocent. So impressed was I with the importance of a declaration of policy such as I have briefly alluded to that, after the capture of

Fort Donelson, I called upon two gentlemen who I had reason to believe enjoyed the confidence of the President, and asked them to urge upon him the propriety of issuing a proclamation announcing such a policy as I have indicated. I believed that the hour of victory was the hour of magnanimity, and I now believe if this had been done, we should have had peace in less than ninety days. I may be mistaken, but I am glad to find that in this opinion I am not alone. Hon. James Guthrie, in a speech the other day, expressed similar views. I will read an extract or two from his address:

"This day"—

That was the 22d of February, the anniversary of Washington's birthday—

"This day, if the power was with me, an amnesty and free pardon should be proclaimed to all, whether in arms or not, who, in a prescribed time, give up their arms and the rebel cause, acknowledge the supremacy of the Constitution and the laws, and agree to submit to them. I am asked what I would do with the leaders? I reply, I would leave them to the tribunals and the punishment prescribed by the laws they have violated, but I am for the largest forgiveness consistent with the restoration of the Constitution and the safety of the Union. All are not leaders in this rebellion who have acted as its noisy champions, through the press, or on the stump, or filled high places in the strife."

"I would declare this amnesty and pardon as a war measure. It may draw thousands who feel that rebellion is not a remedy for existing or supposed evils, and are earnestly and hopefully availing to escape, as far as possible, from the consequences of their acts. I would open the door for them. Many of the seceded States have always been for the Union, and only await the time they may safely take ground for it."

I know, sir, my State has always been, and is to-day, if a fair expression of the opinion of her people could be had, for the Union by fifty thousand majority:

"I would declare the amnesty and pardon as a financial measure—as a measure of economy in this most expensive and wasteful civil war. I believe it would act promptly in the restoration of the Constitution and the Union, and be more effective in restoring the Union than the most signal victories our arms have or still obtain. If it shortened the war but fifty or one hundred days, it would save to the nation more than ten times the value of all the estates you could possibly confiscate in accordance with the Constitution."

"The worst enemies of the Constitution are those whose constant cry is for the blood of the rebels, and the confiscation of their estates, with the emancipation of the slaves, and who, to reach their purposes, would trample the Constitution, the rights of property, and the principles of humanity under foot, and blast forever the prosperity of the nation. Such men propose to establish, through congressional action, provisional governments over the seceded States."

I invite the attention of Senators while I read an extract from the farewell address of General Jackson. I read it without comment. Senators will see the lesson which it teaches:

"The Constitution cannot be maintained nor the Union preserved in opposition to public feeling, by the mere exertion of the coercive powers confided to the Government. The foundations must be laid in the affections of the peo-

ple; in the security it gives to life, liberty, character, and property in every quarter of the country, and in the fraternal attachments which the citizens of the several States bear to each other as members of one political family, contributing to the happiness of each other."

The Senate will pardon me for a moment while I allude to myself. I am not in the habit of speaking of myself. I do not think it in good taste, and look upon it as a custom more honored in the breach than the observance; but there are occasions when it becomes necessary to do so. Intimations questioning my loyalty have been made by those who would impress upon the country that to be loyal it is necessary to be an abolitionist. The Senate will, therefore pardon me for saying that I have periled all, life itself, in defense of the Constitution and Union of my country. I have been engaged in this fight actively since December, 1859. I saw the storm coming, and sought to prepare the people of my own mountain home for it, so that when it did come we would be able to resist it. I stood in the capitol of my own State fighting the battles of the Constitution and the Union amid the jeers and taunts, hisses and threats of the mob. From the 7th day of March to the 18th day of April, in the city of Richmond, the assassins sought my life. On Saturday the 13th day of April last, a crowd of not less than one hundred men, devils I will call them, came to my lodgings about midnight with drum and fire and rope to hang me. My colleague in the House [Mr. Brown] witnessed the scene. For weeks after my return to my own home in my own town my life was threatened. When I would leave to go to a neighboring county to address the people, my friends would follow to guard me on the road without informing me of it. I led the movement, and drew the resolution adopted by the people of my own county of Harrison, to whom belongs the honor of inaugurating the movement which resulted in organizing and making effective the Union sentiment of northwestern Virginia. I stand here to-day in the nation's Capitol, as I stood in the capitol of my State, to defend from assault the Constitution and Union of my country, come from what quarter it may. In their defense I am prepared to sacrifice all—life itself. I stand upon the platform of the President as announced by himself in his inaugural, reiterated in his message to Congress in July last, and again in his message to Congress at the commencement of this session. I stand upon the solemn declarations of the last Congress and of this. I maintain, as the Union was formed so it should continue and endure forever an everlasting monument of the wisdom and patriotism of its founders.

Let us, Mr. President, in the language of a distinguished statesman and former Senator upon this floor, "cling to the Constitution as the mariner clings to the last plank when night and the tempest close around him."